

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.400 OF 2007

Smt Subhadra Chandrakant Sonawane,)
Age: 41 years, Residing at Shiv Shakti)
Nagar, Navi Chawl No.10, Behind Cross)
Road, Dharavi, Mumbai.)...Appellant

Versus

The Union of India,)
Represented by the General Manager,)
Central Railway, Mumbai.)...Respondent

Shri G.J. Mohan Rao for the Appellant.

Shri Anand Samant for the Respondent.

CORAM : ABHAY S. OKA, J.

DATE : APRIL 27, 2007.

JUDGMENT:

1. By this First Appeal, the Appellant has taken exception to judgment and order dated 15th November, 2002 passed by the by the Railway Claims Tribunal, Mumbai Bench at Mumbai by which claim Application filed by the Appellant was rejected. The case of the Appellant was that on 15th April, 1999 her son Abhijit Chandrakant Sonawane (hereinafter referred to as a deceased) was travelling by a local train from Chembur Station to Sion Station. While travelling by the local train, he fell down from the running train near

Chunabhatti Railway Station at about 5.30 p.m and sustained injuries. The deceased was taken to Sion hospital where he succumbed to injuries on 16th April, 1999. According to the case of the Appellant the deceased died as a result of an "untoward incident" within the meaning of section 123(c)(2) of the Railways Act, 1989 (hereinafter referred to as the said Act).

2. The Claim Petition was contested by the Respondent by filing written statement. The written statement is of denials. One of the contentions raised in the written statement is that the deceased was not a bonafide passenger at the time of the incident.

3. The Railway Claims Tribunal found that the deceased was a bonafide passenger of the train in question. The learned Members of the Tribunal recorded a finding that the deceased was travelling on a free railway pass issued by the Railways. The Tribunal accepted the case made out by the Appellant that at the relevant time the deceased was working as a labourer with a railway contractor and therefore, he was holding a free railway pass. The Tribunal held

that the Respondent-Railway failed to lead evidence to show that there was no such contractor as pleaded by the Appellant to whom passes were issued. The Tribunal dismissed the Claim Petition on the ground that the Appellant has not produced the post mortem report on record. The Tribunal held that in all such accidental death cases production of post mortem notes was mandatory. The Tribunal also recorded a finding that the deceased was unmarried and therefore, the Appellant mother alongwith the father of the deceased were dependents. Though a case was made out by the Appellant that she had divorced her husband, the said case could not be established. Therefore, the Tribunal held that the Appellant alongwith her husband were the dependants of the deceased within the meaning of the said Act.

4. The learned Advocate for the Appellant submitted that in view of the oral and documentary evidence on record, it was not necessary to produce the post mortem notes. He submitted that it is not mandatory to produce the post mortem notes. He submitted that the Appellant was entitled to receive entire compensation of Rs.4,00,000/-. He submitted that for a period of fifteen years and more the

Appellant is residing separately from her husband as a result of divorce. The learned Advocate for the Respondent supported impugned judgment and order by pointing out that the death on account of alleged "untoward incident" could have been established only by production of post mortem notes as this is not a case where the deceased died on the spot and according to the case of the Appellant the deceased succumbed to the injuries on the next day in the hospital. He submitted that even the record of the hospital is not produced to show that the death was on account of injuries sustained in the accident.

5. I have considered the submissions. The finding of the Tribunal that the deceased was a bonafide passenger in a train at the time of the incident has not been challenged by the Respondent-Railway. Therefore, it is not necessary to deal with the such aspect. The Tribunal has also recorded a finding that there is a documentary evidence on record to show that the deceased sustained injuries as a result of fall from the train. However, according to the Tribunal, only the post mortem report could have showed whether the date was due to the accident or due to any other cause.

6. It will be necessary to refer to the evidence led by the parties. The death certificate issued by the Municipal Corporation of the Greater Bombay shows that the deceased died on 16th April, 1999 at Sion hospital. A report submitted by the railway police constable Shri S.D. Pardeshi on 15th April, 1999 is on record. The said report records that one person fell down from a local train near Chunabhatti Station. He has recorded that the said person received major injury on the rear side of his head and also suffered an injury on left shoulder. He recorded in the report that the injured person was unconscious and that he was admitted him to Sion hospital in Ward No.E. He stated that person accompanying the injured person disclosed the name of injured person as Abhijit Chandrakant Sonawane. He stated that a card was found on the person of the injured.

7. The Appellant filed affidavit of examination-in-chief. In the affidavit of examination-in-chief she stated that the deceased was working with a railway contractor. She stated that she received a telephone call from Kurla railway police station stating that the deceased had fallen

down from a train near Chunabhatti railway station and was admitted to Sion hospital. She stated that she rushed to the hospital and she found that her son had sustained injuries to head and shoulder. She stated that her son died on the next day i.e on 16th April, 1999. The perusal of the cross-examination shows that not even a suggestion is given to her by the Advocate for the Respondent that the deceased did not die as a result of injuries sustained by him in the accident and the cause of death could be different. The major thrust of the cross-examination appears to be on the controversy regarding possession of a railway pass. If the case of the Railways was that the deceased died of some other cause, a specific suggestion to that effect would have given.

8. The Appellant has also filed an affidavit of evidence of one Parshuram Yellappa Sonawane who was a co-worker alongwith deceased working with a railway contractor. He stated that he alongwith the other workers including the deceased were travelling on 15th April, 1999 from Guru Teg Bahadur Nagar to Tilak Nagar by a local train. He stated that between Kurla and Chunabhatti Station, due to heavy rush the deceased fell down from the running train. He stated that all

of them got down at Chunabhatti Station and went towards the spot where the deceased fell down. He stated that he alongwith other workers took the deceased to Sion hospital and informed the mother of the deceased about the incident. Even in his cross-examination no suggestion has been given that the cause of death of the deceased was not the accidental fall from the railway train but something else.

9. Thus, the evidence on record establishes that the deceased accidentally fell down from a train. This is not a case where the Respondent has alleged that the deceased was negligent. There is material on record to show that the deceased suffered head injury as a result of accidental fall and was admitted in Sion hospital in unconscious condition and on the next day the deceased died. Considering the aforesaid evidence on record and the nature of the cross-examination made by the Advocate for the Respondent, it is very difficult to accept the case of the Respondent that the cause of death of the deceased was something else than the injuries sustained in the accident. Since the oral and documentary evidence on record proves the case of the Appellant regarding the

death of the deceased as a result of an untoward incident within the meaning of section 123 (c)(2) of the said Act, the claim could not have been dismissed on account of failure to produce the post mortem notes. If there is an evidence on record to show that the death is the result of an untoward incident, it is not necessary to produce post mortem notes in every case. Considering this view of the matter, the Appeal must succeed.

10. It is not in dispute that the deceased was unmarried. It is also not in dispute that the father of the deceased is very much alive. There is no documentary evidence produced on record by the Appellant to show that there is a legal and valid divorce between herself and the father of the deceased. The Appellant alongwith her husband are the dependants within the meaning of the said Act who are entitled to receive compensation. Thus, the Appellant will be entitled to only one half share in the compensation and rest of the amount will have to be paid to the husband of the Appellant.

11. Hence, I pass the following order:

- (i) The impugned order is quashed and set aside and the Claim Petition filed by the Appellant is allowed.
- (ii) The Respondent will pay compensation of Rs.4,00,000/- together with interest thereon at the rate of 6 per cent per annum from the date of filing of the Claim Petition till the payment of the amount. The amount shall be deposited by the Respondent with the Tribunal within the period of four months from today.
- (iii) The Appellant will be entitled to only 50 per cent of the amount deposited by the Respondent. The balance 50 per cent of the amount shall be paid over to Shri Chandrakant Sonawane, husband of the Appellant after he makes an Application for withdrawal before the Tribunal. The amount will be paid only after due identification. Till the time the husband of the Appellant makes an Application for withdrawal of the amount, the amount of his share shall remain invested in fixed deposit in any nationalised bank.

- (iv) Appeal is accordingly allowed in above terms with no orders as to costs.

JUDGE